

Congress of the United States
Washington, DC 20515

January 7, 2004

Michael O. Leavitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20001

John L. Henshaw
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration
Room S2315
200 Constitution Ave.
Washington, DC 20210

Dear Administrator Leavitt and Assistant Secretary Henshaw:

We write to you regarding your responsibility to protect the public from risks of injury from asbestos. This letter is a follow-up to our letter of October 16, 2003, regarding EPA's "Guidance for Preventing Asbestos Disease Among Auto Mechanics" (commonly referred to as the "Gold Book"). While we appreciate that on November 18, 2003, EPA replied to our October 16 letter, EPA's reply did not address our specific questions or provide the information we requested. Moreover, to date we have received no substantive response from OSHA to our October 16 letter.

As Members of the House Committee on Government Reform and the House Committee on Education and the Workforce, our oversight jurisdiction includes both EPA and OSHA. We reiterate our outstanding request for information about the risks to auto mechanics from exposure to asbestos and about EPA and OSHA's activities to address these risks. In addition, we request further information related to the request from Morgan Lewis & Bockius LLP to withdraw the Gold Book under the Data Quality Act. Specifically, we seek information regarding whether Morgan Lewis is an affected party for purposes of its Data Quality Act request. We also request information on EPA's plan to revise its asbestos program, as indicated in EPA's response of November 24, 2003, to the Morgan Lewis request.

Information on Risks from Asbestos to Auto Mechanics

We understand from EPA's response to Morgan Lewis that EPA will update the Gold Book through a notice and comment process in Spring 2004. EPA's plan to conduct a process to revise existing EPA guidance does not substitute in any way for a response to congressional oversight inquiries. We expect EPA and OSHA to address specifically our earlier questions, which are repeated below (slightly updated in light of EPA's response to the Morgan Lewis request).

1) Is there any evidence to show that asbestos no longer contaminates brakes in new vehicles, brake replacements or auto or brake repair facilities, or that auto mechanics are not at risk of exposure to asbestos from brake work?

2) What is EPA and OSHA's current information on the risks from asbestos exposure faced by auto mechanics working on brake maintenance? If current information is available, is it based on data from small, privately owned facilities? If current information is not available, why have the agencies failed to collect such information?

3) What is known about the extent to which imported brake parts containing asbestos comply with the requirements for warning labeling? This is a particular concern because imported brake parts appear to have increased in volume by one-third over the past 2 years.

4) What activities are EPA and OSHA currently undertaking to monitor the risks of asbestos exposures to auto mechanics, provide adequate asbestos-related safety information to auto mechanics, and enforce asbestos labeling requirements and safety standards?

Whether Morgan Lewis & Bockius LLP Is an Affected Party

On a related issue, we are concerned that EPA appears to have acted on a Data Quality Act request that does not comply with the law or EPA's own guidance because the requester, Morgan Lewis, does not appear to be an affected party.

As passed by Congress, the Data Quality Act instructs the Office of Management and Budget (OMB) to issue federal guidance to agencies to establish "administrative mechanisms allowing **affected persons** (*emphasis added*) to seek and obtain correction of information..." Pub. L. No. 106-554, § 515 Appendix C. OMB's final regulations on this issue state: "Our conclusion is that 'affected persons' are people who may benefit or be harmed by the disseminated information." According to EPA's own guidelines, requesters must demonstrate their status as an affected party: "In the draft Guidelines, EPA had adopted OMB's definition. EPA agrees with comments suggesting that, instead of elaborating on the definition of 'affected person,' a more open approach would be to ask complainants to describe how they are an affected person with respect to the information that is the subject of their complaint. EPA is asking that persons submitting requests for correction provide, among other things, such an explanation." *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*, December 2002, pg. 56.

In its request, Morgan Lewis does not discuss in any way how it is an affected party or how it might be harmed or benefited by the Gold Book. Morgan Lewis has not responded to inquiries seeking to establish this status from the Office of Congressman Kucinich or members of the press. EPA has apparently failed to abide by its own guidance and the law by acting on Morgan Lewis' request without establishing its status as an affected party.

5) We ask that EPA request from Morgan Lewis & Bockius LLP and provide to us any information that would establish Morgan Lewis as an affected party. Please also explain why EPA acted upon Morgan Lewis' Data Quality Act request without first establishing whether this criterion was met.

Comprehensive Update and Revision to Agency Asbestos program

EPA's response to Morgan Lewis & Bockius LLP on November 24, 2003, states that EPA is starting an "overall effort to update and revise, as appropriate, various information materials associated with the Agency's Asbestos program."

6) What specific materials does EPA plan to update and/or revise? Are these informational, guidance or regulatory materials? Please provide a list.

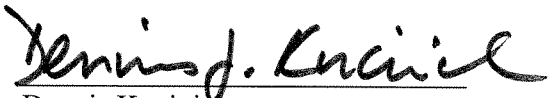
7) What process will EPA use for this effort? Will external panels, commissions or consultants be involved?

8) Will EPA work with any other federal agencies, such as the National Institute for Occupational Safety and Health?

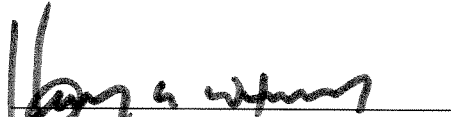
9) EPA's November 18, 2003 letter references recommendations of a Blue Ribbon Panel that EPA convened. What recommendations in the Blue Ribbon Panel's *Asbestos Strategies* report are the focus of EPA's efforts?

We hope to work with EPA and OSHA to reduce asbestos exposure and eliminate risks for asbestos injury. We request a reply by January 31, 2004. Thank you for your attention to this matter.

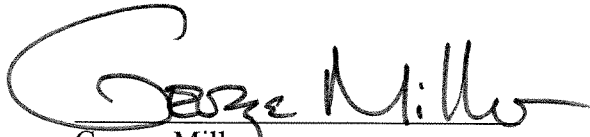
Sincerely,



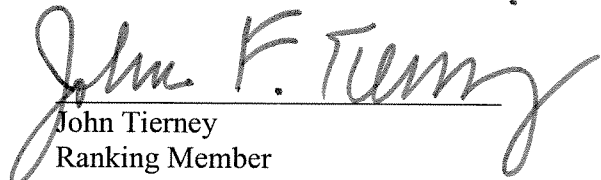
Dennis Kucinich
Ranking Member
Subcommittee on National Security,
Emerging Threats and International Relations



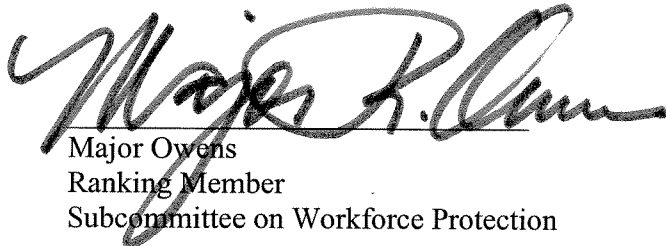
Henry Waxman
Ranking Member
Committee on Government Reform



George Miller
Ranking Member
Committee on Education and
the Workforce



John Tierney
Ranking Member
Subcommittee on Energy Policy,
Natural Resources and Regulatory
Affairs



Major Owens
Ranking Member
Subcommittee on Workforce Protection